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Supreme Court, U.S.
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No. 98-361

In The

Supreme Court of the United States

October Term, 1997

CASTLEWOOD, INC.,

Petitioner,

vs.

ANDERSON COUNTY, TENNESSEE, PATSY STAIR, TRUSTEE, OWEN K. RICHARDSON, TAX ASSESSOR, CITY OF OAK RIDGE, TENNESSEE and TENNESSEE STATE BOARD OF EQUALIZATION,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Tennessee

RESPONDENTS' BRIEF IN OPPOSITION

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18 pp

QUESTION PRESENTED

Anderson County does not agree that the petitioner has presented the question fairly. The appropriate question in this case may be stated as follows:

Whether the Constitutional and statutory law of the State of Tennessee, as construed by the Tennessee Supreme Court, relative to the classification and assessment of condominium property for real property *ad valorem* tax purposes, is in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, because it provides that two or more condominium units under common ownership in the same structure and used as rental apartments, should be classified as industrial or commercial property, and assessed at 40% of appraised value, while single condominium units, used as owner-occupied residences or as rental property, should be classified as residential property, and assessed at 25% of appraised value.

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Article II, § 28 of the Constitution of Tennessee 1, 2, 4, 9

STATE COURT PROCEEDINGS

The petitioner is incorrect in its assertion that the Tennessee Court of Appeals made any reference to an equal protection issue. The only constitutional issue addressed by that court was the construction and interpretation of Article II, § 28 of the Constitution of Tennessee.

The Tennessee Supreme Court noted that the Tennessee Court of Appeals did not address the equal protection issue. See Opinion, Pet. App. A, p. 2a, n.1:

> The Court of Appeals did not consider the federal constitutional issue but it is asserted on this appeal.

Contrary to the assertions of the petitioner, Pet. at 8, the reference to "fundamental fairness" in the Opinion of the Tennessee Court of Appeals, Pet. App. C, 15a, is not part of an equal protection analysis. It is instead a part of the reasoning process of that court in resolving the question of constitutional and statutory construction relative to the classification and assessment of condominium property, and in carrying out the intent of the framers of Article II, § 28, of the Constitution of Tennessee.

REASONS FOR DENYING THE WRIT

I.

THERE IS NO LEGITIMATE EQUAL PROTECTION ISSUE UNDER THE FACTS IN THIS CASE.

There is no compelling reason to grant the petition in this case, because there is no substantial equal protection issue presented by the decision of the Tennessee Supreme Court.

> Where taxation is concerned, and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produces a reasonable system of taxation.

Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 at 359, 35 L. Ed. 2d 351, 93 S. Ct. 1001 (1973). Moreover, when the equal protection issue arises with regard to classification, if the classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law. *Brown-Forman Co. v. Kentucky*, 217 U.S. 563 at 573, 54 L. Ed. 883, 30 S. Ct. 578 (1910).

Considering all the circumstances in this case, there is no colorable equal protection issue arising from the interpretation and construction of the constitutional and statutory law of the state by the Tennessee Supreme Court regarding the classification and assessment of condominium property for real property *ad valorem* tax purposes. Under Tennessee law as established by the decision of the state's highest court, similarly situated condominium owners are treated exactly alike. The owners of single condominium units pay taxes based upon an assessment of 25% of the appraised value. Owners of two or more condominium units in the same structure who rent or lease their units to others for use as apartments pay taxes based upon an assessment of 40% of the appraised value.

This is in accordance with the intent of the applicable provision of Article II, § 28 of the Constitution of Tennessee, relative to the classification and assessment of industrial and commercial property on the one hand, and residential or farm property on the other, with multi-unit income-producing residential properties to be taxed at a higher rate than owner-

occupied residences and farms. *Snow v. City of Memphis,* 527 S.W. 2d 55 (Tenn. 1975); *Louisville & N.R.R. vs. Public Service Commission,* 493 F. Supp. 162 (M.D. Tenn. 1978), *aff'd,* 631 F.2d 426 (6th Cir. 1980), *cert. denied,* 450 U.S. 959, 67 L. Ed. 2d 384, 101 S. Ct. 1418 (1981). The Tennessee Supreme Court has reaffirmed that this is the public policy of the state in the decision now under attack by the petitioner.

The state's constitutional and statutory system for classification and assessment clearly has a rational basis in that it taxes income producing property at a higher rate by applying a higher assessment to the appraised value. Under the facts of this case, where the petitioner constructed some 86 condominium units, in multiple structures of more than two (2) units each, and leases or rents 80 of the units to others for profit in the same way units are rented in apartment complexes, it is not a violation of the rights of the landlord to tax the rental units as industrial or commercial property.

Contrary to the assertion of the petitioner, the taxing authority does not examine the ownership of the units to determine how to classify the property for assessment purposes. Rather, the taxing authority looks to the *use* of the units. Ownership is relevant only to this extent: if the owner of two (2) or more units in the same structure rents or leases them to others, the same are being used as rental apartments, i.e., income producing property, and are to be classified and assessed as industrial and commercial property. In exactly the same way, the owners of multi-unit rental residential apartments are classified and assessed taxes on their income producing properties at the industrial and commercial rate. This is in accordance with the state constitutional mandate:

> Real Property shall be classified into four (4) subclassifications and assessed as follows:

(a) Public Utility Property, to be assessed at fifty-five (55%) percent of its value;

(b) Industrial and Commercial Property, to be assessed at forty (40%) percent of its value;

(c) Residential Property, to be assessed at twenty-five (25%) percent of its value, ***provided that residential property containing two (2) or more rental units is hereby defined as industrial and commercial property*** [emphasis added]; and

(d) Farm Property, to be assessed at twenty-five (25%) of its value.

See Constitution of Tennessee, Article II, § 28; Pet. App. D, p. 22a.

The petitioner complains that it is illogical to tax the owner of multiple single-family residence rental properties based on a residential classification while at the same time taxing the owner of multiple rental condominium units in the same structure based on an industrial or commercial classification. Pet. at 10. It can be argued with greater force that it is illogical to have two identical multi-unit apartment buildings side by side, of equal value, and identical in appearance and total value, with one legally constituted as traditional apartments, and one legally constituted as condominiums, with each condominium being under common ownership for use as rental property, yet with the income-producing apartment property being taxed at 40% of the appraised value and the income-producing condominium property being taxed at 25% of appraised value. While there may be logical arguments on both sides of the equation, the classification approved by the Tennessee Supreme Court in this case is consistent with the intent of the state

constitution that multi-unit income producing residential property be classified as industrial or commercial.

The Tennessee Supreme Court has articulated a rational basis for the difference in treatment, and there is clearly support for that conclusion in the constitution, statutes, and case law of the state. The decision of the Tennessee Supreme Court in this case is the definitive statement of the state's policy on the classification and assessment of multi-unit income producing condominium properties. There is nothing discriminatory about either the classification system itself, or the determination that multi-unit rental condominiums should be classified as industrial or commercial. Even the petitioner does not argue that there is no rational basis for taxing industrial and commercial property at a higher rate than single family residences and farms.

As demonstrated by the Tennessee Supreme Court in its discussion of the equal protection issue, there is an obvious rational basis for the classification and assessment provisions of the Constitution of Tennessee and the enabling statutes which are at issue here, which is an intent to tax income producing property at a higher rate than owner-occupied residences and farms. Pet. App. A, 6a-8a. It is equally clear that the Tennessee Supreme Court and Tennessee Court of Appeals have harmonized the constitutional and statutory provisions relative to the classification and assessment of property for tax purposes with the state's horizontal property act. At the same time, those courts declined to read the horizontal property act as an exception to the statutes on classification and assessment, or as a vehicle for circumventing the constitutional and statutory intent that multi-unit income producing apartments or condominiums be taxed at the industrial and commercial rate. Pet. App. A, 3a-5a; Pet. App. B, 13a-15a.

This precise issue was one of first impression in the Tennessee courts. The Tennessee Supreme Court has now clearly stated the law of the state on the property tax question, and at the same time has demonstrated a rational basis for the classification and assessment of the petitioner's 80 rental condominium units.

An owner of a single family dwelling may rent the property to another without losing the residential classification. The owner of a single condominium is treated similarly. It is only where multiple rental units under common ownership in the same building are rented or leased to others that the properties are assessed at the industrial and commercial rate. This classification applies whether the units are apartments or rental condominiums under common ownership. Such circumstances fall clearly within the constitutional intent to classify income producing property as commercial. *Snow* and *Louisville & N.R.R., supra,* p. 3. There is a rational basis for the classification and assessment method on the very face of the constitution and statutes of the state, as construed by the state's highest court.

II.

THERE IS NO CONFLICT BETWEEN THE DECISION OF THE TENNESSEE SUPREME COURT IN THIS CASE AND ANY OTHER STATE COURT OF LAST RESORT, ANY UNITED STATES COURT OF APPEALS, OR ANY RELEVANT DECISIONS OF THIS COURT.

Consideration of this case by this Court would not resolve any existing conflict among other courts. As conceded by the petitioner, "[t]his Court has not addressed the simple issues raised in this petition." Pet. 21. Nor does the petitioner argue that the decision of the Tennessee Supreme Court in this case is in conflict with the decision of any other state court of last resort or any United States court of appeals. In fact, none of the considerations governing review on certiorari as set forth

in Rule 10 appear to be applicable in this case. Simply stated, there are no compelling reasons to grant the petition in this case.

While admitting on the one hand that this Court has not addressed the issues raised in this petition, the petitioner argues on the other that the decision of the Tennessee Supreme Court violates the principles expressed in *Allegheny Pittsburgh Coal Co. v. County of Webster County, West Virginia,* 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989) and *Nordlinger v. Hahn,* 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992). However, it is manifest from the Opinions in those cases that the outcome of the inquiry in each case was driven by factual variations in light of the unique property, taxation, and constitutional law of West Virginia and California, respectively.

In *Allegheny Pittsburgh,* the classification was an arbitrary one invented entirely by the local tax assessor, which discriminated against recent buyers of real estate, and had no other basis for the classes or distinctions used in the assessments. Conversely, in the instant case, each member of every class is treated exactly alike, and the owners and renters of multi unit-condominiums are classified and assessed exactly like each other and like the owners and renters of multi-unit apartments. This method more than meets the test that

> the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings.

488 U.S. at 346.

Nordlinger is not authority for the proposition that certiorari should be granted under the facts of this case; indeed

it is much to the contrary. There, a system almost as unfair and oppressive as the "welcome stranger" assessments in *Allegheny Pittsburgh* survived an equal protection challenge. Although there is little factual similarity between California's Proposition 13, which was at issue in *Nordlinger*, and the facts of this case, it is instructive that the treatment of those taxpayers survived.[1] The ultimate conclusion upon a comparison of *Allegheny Pittsburgh* and *Nordlinger* is that the question in this case must be resolved squarely outside anything resembling an equal protection violation.

In the case *sub judice*, not only was the case litigated in light of a question primarily of construction and interpretation rather than an equal protection issue, but the facts which do appear in the stipulation lend themselves to support a conclusion that there is a rational basis for the result approved by the Tennessee Court of Appeals and the Tennessee Supreme Court in the decisions below.

The highest court in Tennessee has made an authoritative interpretation of that state's constitution and statutes relative to the stipulated facts on the classification issue. Apparently no other state has the same constitutional and statutory provisions. While it may be true, as stated by the Tennessee Court of Appeals, that "both parties' positions are well reasoned," Pet. App. C, 15a, and that good arguments can be made on both sides of the question of constitutional and statutory construction, once that question is definitively resolved by the state's highest court, it virtually by definition cannot be an equal protection violation, where, on the facts, every member of each class is treated equally. The horizontal property act has been harmonized with Article II, § 28 and the

1. Justice Stevens, in lone dissent, described the disparate tax burden between new owners and the landed gentry in *Nordlinger* as conferring "a privilege of a medieval character." 120 L. Ed. 2d at 25.

implementing statutes to require the owners of multi-unit rental condominiums in the same building to pay taxes at the industrial or commercial rate, just like the owners of identical multi-unit apartments. Similarly situated property owners are being treated equally, and the classification rests upon the policy ground of taxing multi-unit apartments or condominiums in the same building under common ownership as income-producing industrial or commercial property. The state constitutional and statutory language, as construed by the state's highest court, easily passes muster under the equal protection clause on its face.

III.

THE PETITION SHOULD BE DENIED SINCE IT IMPROPERLY SEEKS REVIEW BY THE SUPREME COURT OF THE CORRECTNESS OF AN INTERPRETATION OF STATE LAW BY THE STATE'S HIGHEST COURT.

The petition in this case is liberally sprinkled with assertions that the decision of the Tennessee Supreme Court is contrary to the constitutional and statutory law of the state.[2]

2. *See e.g.*, Pet. p. 3 ("This taxation scheme is without any basis under Tennessee law. . . ."), p. 9 ("This standard for determining and assessing real property taxes is not authorized in the Tennessee Constitution or the Tennessee Horizontal Property Act."), p. 11 ("The tax assessment scheme and classification adopted by the Tennessee Supreme Court for residential condominium units violates the Fourteenth Amendment because it fails to follow the dictates of Article II, Section 28 of the Tennessee Constitution and the Tennessee Horizontal Property Act.") ("Under Tennessee law, ownership is not a factor to be used in classifying residential condominiums for tax purposes."), p. 12 ("The 1992 Tax Assessment does not comply with the dictates of the Horizontal Property Act."), pp. 13-14 ("By considering the ownership in classifying

(Cont'd)

These arguments ignore the settled rule that a state's highest court is the ultimate authority as to the construction of its constitution and statutes. *Addington v. Texas*, 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979); *In re Murchison*, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 2d 942 (1955).

Accordingly, to the extent the petition is founded upon an argument that the decision of the Tennessee Supreme Court in this case is not in accordance with Tennessee law, the same does not present a reviewable issue to this Court. *Id.*

By arguing that the classification approved by the Tennessee Supreme Court is not in accordance with Tennessee law, the petitioner in this case reveals the deeper flaw in its equal protection argument: once the classification is made, the petitioner is treated exactly like all other owners of multi-unit rental apartments or condominiums. The petitioner does not argue that the classes themselves violate equal protection, but simply argues that it has been erroneously classified.

(Cont'd)

the Units, the Tennessee Supreme Court improperly classified and approved an unequal tax assessment scheme on absolutely identical properties."), p. 14 ("The decision by the Tennessee Supreme Court approving the 1992 Tax Assessments based on this distinction violates . . . Tennessee law. . . .") ("The Tennessee Supreme Court's argument regarding the 'constitutional intent' of Article II, Section 28 ignores the clear language of Article II, Section 28."), pp. 18-19 ("The Tennessee Supreme Court found that ownership of the property and whether the property was income-producing to be determinative factors in the classifying and assessing different taxes on identical condominium units despite no legal authority to support this finding."), p. 19 ("The 1992 Tax Assessment is improper. The Tennessee Supreme Court relied upon factors that are not supported or mandated by the Tennessee Constitution or applicable statutes.") ("As set forth above, the Tennessee Supreme Court's decision fails to comply with Tennessee law and arbitrarily taxes owners of absolutely identical condominium units differently.").

The petitioner does not argue that members of the same class are receiving disparate treatment. It also does not argue that the establishment of a higher rate of assessment for industrial or commercial property is a violation. The petitioner's argument is really a question of the appropriateness of the classification it has been assigned. When viewed in this light, the question purportedly presented for review in this case evaporates, leaving only a pure matter of state law.

IV.

THE EQUAL PROTECTION ISSUE SHOULD NOT BE CONSIDERED AS IT WAS NOT SQUARELY BRIEFED AND ARGUED AT ANY TIME WHEN THE CASE WAS ON APPEAL, BUT NONETHELESS WAS ADDRESSED BY THE TENNESSEE SUPREME COURT IN ITS OPINION.

The equal protection issue in this case should not be considered at this time because it was not squarely briefed or argued while the case was being appealed from the trial court to the intermediate appellate court and from that court to the state supreme court, but rather, was never addressed in any of the decisions of the courts below until the case was on second-tier appellate review in the state's high court. Pet. App. A, p. 2a, n. 1, pp. 5a-8a.[3]

This case was tried on a stipulation of facts in the trial court, and that stipulation was entered into at a time when the focus of the litigation was upon questions regarding the

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3. The petitioner did allege an equal protection violation in its original complaint. However, that allegation appears with a laundry list of other alleged state and federal constitutional violations, the remainder of which were never pursued in the litigation. Pet. App. F, pp. 49a-50a, ¶¶ 14-17.

construction and interpretation of the Tennessee system of classification and assessment as embodied in its constitution and laws. If an equal protection issue arising from the constitutional and statutory provisions for the classification and assessment of condominium property in Tennessee is going to be addressed by this Court, it should only be done in a case where that was the primary issue being litigated from the outset of the proceedings; rather than where it was not addressed by any court until the case was on appeal. If this Court is inclined to consider this issue, it would be better to do so only after it has been more thoroughly developed in the courts of the state, under the various factual variations which may arise from time to time and from one condominium complex to the next, in light of the fundamental question of construction and interpretation which is now the settled law as articulated by the state's highest court.

CONCLUSION

For the foregoing reasons, and others which may appear to the Court, the petition for writ of certiorari filed in this case should be denied.

Respectfully submitted,

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